

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

3 DGCI CORPORATION,) Case 1:21-cv-1174
4 Plaintiff,)
5 v.) Alexandria, Virginia
6 TRIPLE ARROW COMPANY FOR) October 27, 2021
GENERAL TRADING CO. LTD.,) 2:00 p.m.
7 Defendant.)
8) Pages 1 - 13

TRANSCRIPT OF MOTION FOR TEMPORARY RESTRAINING ORDER
BEFORE THE HONORABLE ANTHONY J. TRENGA

UNITED STATES DISTRICT COURT JUDGE

13 | APPEARANCES :

14 FOR THE PLAINTIFF:

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 THE CLERK: Civil Action 1:21-cv-1174, DGCI
2 Corporation v. Triple Arrow Company for General Trading
3 Company Limited.

4 Counsel, will you please note your
5 appearances for the record.

6 MR. CURRAN: Tom Curran, C-U-R-R-A-N, 1325
7 Avenue of the Americas, New York, New York, 10019, for
8 DGCI International. With me is my associate, Joseph
9 Frost, F-R-O-S-T.

10 THE COURT: All right. Welcome.

11 We're here on the plaintiff's motion for a
12 temporary restraining order. I understand that notice
13 has been given to Triple Arrow through email exchanges
14 with its Iraqi lawyer. Is that correct?

15 MR. CURRAN: That is correct, Judge.
16 Actually, three times, I believe, we've sent a full set
17 of papers, including the relief sought here today.

18 THE COURT SECURITY OFFICER: Counsel, stand
19 at the lecturn, please, so we can hear you.

20 Thank you.

21 MR. CURRAN: I'm fully vaccinated, Judge.

22 THE COURT: All right. You're welcome to
23 take your mask off.

24 MR. CURRAN: Thank you very much. It's kind
25 of stifling.

1 We sent a full set of all pertinent papers
2 from the complaint to the relief sought today, Your
3 Honor, to the Iraqi counsel with whom we have been
4 corresponding. We have not heard back from them.

5 We are unaware of any U.S.-based counsel
6 other than I'm aware that they had counsel when the
7 underlying Master Service Agreement was negotiated, in
8 substantial part, within this district.

9 THE COURT: I saw from the emails you've
10 asked them to accept service. I take it that hasn't
11 happened yet.

12 MR. CURRAN: We have not heard from them at
13 all, Judge.

14 THE COURT: All right. How do you propose
15 serving them?

16 MR. CURRAN: We are hopeful -- we remain
17 hopeful of trying to find them in this district. There
18 was a bank account at one point in this district, and
19 there was a -- the person who signed the Master Service
20 Agreement, Mohammed Faisal Bradosti, we believe has
21 been in this district. Also, a person associated with
22 Triple Arrow in terms of ownership, Mohammed Faisal
23 Bradosti's uncle, Ghalib Bradosti, we believe may be in
24 this district as well. If we are unable to, I do
25 anticipate our seeking relief from the Court in the

1 form of alternative methods of service.

2 I do note that the Master Service Agreement
3 provides for the parties to communicate on material
4 notice matters by email, and I do note that the Iraqi
5 counsel has felt free to communicate with us about
6 legal matters relating to their intentions in Iraq.

7 THE COURT: All right. I've reviewed the
8 motions papers. Why don't you summarize for the Court
9 the position of the plaintiff in this case.

10 MR. CURRAN: We are well aware, Judge, the
11 relief we're seeking is sparingly granted and for good
12 reason. That said, to put it quite plain, if not this
13 case, then when?

14 The situation that has developed in Iraq
15 despite our pleading with them, "If you have a dispute,
16 here's where it belongs pursuant to the contract," and
17 noting that they are claiming monies owed under that
18 contract. So they're not opposed to the MSA, the
19 Master Service Agreement, at least when it serves their
20 purposes to sue in Iraq. But that situation is the
21 very reason why the clear, plain, and mandatory
22 language relating to forum selection was placed in this
23 contract and negotiated between these two parties.

24 One of the concerns, Your Honor -- going with
25 a conservative judicial approach, one concern is

1 international comity. Well, granting the relief that
2 we seek here today, Judge, I would respectfully
3 suggest, actually promotes international comity. It
4 sends --

5 This international commerce agreement,
6 substantially negotiated at our client's offices in
7 McLean, should not be allowed to be avoided by somebody
8 filing strike suiting in Iraq and, as we are advised by
9 local counsel in Iraq, have that court follow Iraqi law
10 as evidently is its intention on November 8 when
11 they've scheduled a hearing. That's precisely the
12 situation that was specifically negotiated out of this
13 contract.

14 If there are to be disputes, as we have said
15 to our adversaries in Iraq, that's fine. We understand
16 you have a dispute. If you want to file something,
17 please do it in accordance with the MSA, in the first
18 instance, in the federal district court in the Eastern
19 District of Virginia. They have not, obviously, heeded
20 our requests.

21 All the factors that we've seen, in all the
22 courts, we meet. This is for the protection of this
23 Court's jurisdiction, which the parties provided by
24 forum selection, the forum selection clause being
25 regularly enforced by this circuit.

1 Although this isn't a Rule 65 standard, we
2 believe we meet that too. There is ongoing harm which
3 will become irreparable -- and it is certainly
4 immediate -- going on in Iraq. We've had a lawyer for
5 Triple Arrow show up at DGCI's offices there and
6 announce that he'll be coming back with members of the
7 local intelligence security agency in the Kurdistan
8 Regional Government and start seizing things.

9 We've had employees hiding in their apartment
10 because of threats.

11 Triple Arrow had been a sponsor locally for
12 visas for some of our employees. They endeavored to
13 lift those visas. We found replacement sponsors.

14 We've been assisted somewhat by the
15 Department of Defense representatives on the ground but
16 not wholly. And all of this is exactly why the forum
17 selection clause and the choice of law clause were
18 placed in this contract and mandatorily so.

19 We've proceeded in a measured way, I believe,
20 Your Honor. We seek a declaration that that clause is
21 valid just as the rest of the contract is valid. The
22 disputed amounts to be paid under that contract were
23 valid according to Triple Arrow, witness the fact that
24 they are claiming those monies under the Master Service
25 Agreement.

1 We seek a determination that the entire
2 Master Service Agreement is valid, that they cease this
3 litigation effort there and bring it here.

4 We have not brought a strike contract
5 violation breach of contract multi-count complaint in
6 this district, Judge. We still remain hopeful, as we
7 also exercise our right under the MSA, to audit the
8 transactions, which we have to do.

9 Once their force protection rating was
10 canceled by the Department of Defense for reasons we
11 don't know, we have to audit the contract and the
12 conduct of the parties under it. Because the
13 alternative is paying Triple Arrow U.S. government
14 monies which aren't ours to pay unless certain things
15 exist. And ethical business practices, compliance with
16 the Foreign Corrupt Practices Act, all of these things
17 were warranted by Triple Arrow in the Master Service
18 Agreement. We have to audit in order to be satisfied
19 that that remains so.

20 I note that Triple Arrow is not cooperating
21 at all with our efforts to audit, which is a fairly
22 complicated process, which I can endeavor to explain if
23 Your Honor wishes.

24 I note that they have no problem with the
25 right that DGCI has to audit under the contract so long

1 as it doesn't detract from moneys they claim to be
2 owed, which kind of is the point of the right to audit,
3 frankly.

4 The Court's jurisdiction -- we believe
5 international comities actually promoted the Court's
6 jurisdiction -- is to be protected. We believe equity
7 is clearly on the side of DGCI in this regard. We're
8 asking for a temporary restraining order. We're
9 hopeful that on the 17th we come back before Your Honor
10 for a full-fledged hearing and that Triple Arrow shows
11 up.

12 You know, this was -- although a measured
13 approach, to be quite candid with the Court, we did
14 choose a measured approach here of a declaratory
15 judgment with injunctive relief sought in support of
16 it. It was also something of a risk, frankly, Judge,
17 because I don't know what the reaction will be in Iraq
18 if they perceive that the United States court isn't
19 upholding the Master Service Agreement and they can do
20 what they wish on November 8.

21 I do know that the Iraqi counsel has advised
22 me that they don't know what the Iraqi court is going
23 to do. In all likelihood, they will look to the Iraqi
24 law and Iraqi remedies to be provided to Triple Arrow,
25 which is exactly why this clear, plain, mandatory

1 language relating to forum selection and choice of law.

2 That's why it's in this contract, Judge.

3 THE COURT: What are you anticipating --

4 maybe this is what you're speaking to -- happening on
5 November 8? Is it a hearing on the merits? Is it a
6 hearing to schedule? Is it a combination?

7 MR. CURRAN: I have asked these very
8 questions, Judge, in anticipation that Your Honor might
9 ask. I can give you the answers that I received, which
10 are not entirely satisfactory and much less clear. I
11 was told, "We're not sure." I was told that Triple
12 Arrow was a prominent citizen and corporate citizen in
13 the region, that that will entitle them to some
14 deference by the court. And I was told that the court
15 will likely apply Iraqi law, which is exactly what the
16 agreement was crafted to avoid.

17 THE COURT: All right. You've scheduled a
18 preliminary injunction on November 17?

19 MR. CURRAN: That is correct. Your Honor
20 granted us that date, yes.

21 THE COURT: Right. Looking at this, the TRO
22 can last only 14 days unless it's renewed. So if the
23 Court grants the TRO, you will have to come in on or
24 before the 14th and for good cause have it extended.

25 MR. CURRAN: I had a very pleasant drive here

1 today, Judge. I'm glad to do so provided I don't miss
2 any of my daughter's field hockey playoffs, which I'm
3 doing today.

4 THE COURT: Well, I'm sorry to hear that.

5 Anything else on that?

6 MR. CURRAN: Nothing, Your Honor.

7 THE COURT: All right. The Court has
8 reviewed the plaintiff's motion for a temporary
9 restraining order. Based on the information available
10 to it and the submissions that have been provided,
11 including the declarations under oath, the Court finds
12 that the plaintiff, DGCI Corporation, has made out a
13 case for a temporary restraining order.

14 First, the plaintiff has made a clear showing
15 that it's likely to succeed on its claim that the
16 defendant is required to litigate any disputes in this
17 court. The mandatory forum selection clause that is in
18 the Master Service Agreement appears to be enforceable
19 in all respects. The forum selection clause appears to
20 have a reasonable relationship to the parties and the
21 dispute and the selected forum. The plaintiff's
22 headquarters is in McLean, Virginia. The defendant is
23 affiliated with an individual named Mr. Bradosti, who
24 appears to be a U.S. resident. The contract was
25 substantially negotiated here in the United States, and

1 the contract concerns field deliveries for U.S. armed
2 forces in Iraq that were awarded to DGCI by the U.S.
3 government. The clause also clearly covers the issues
4 that appear to be being addressed in the Iraqi action.

5 Second, DGCI has made a sufficient showing
6 that it has or will be threatened or experience
7 irreparable harm if the temporary restraining order is
8 not ordered. In that regard, absent injunctive relief,
9 the forum selection clause does become essentially a
10 nullity, and the plaintiffs could be subjected to
11 expenses and other consequences that the clause was
12 clearly intended to prevent, as well as the
13 inconsistent determinations by different courts,
14 particularly since a hearing in the related case is
15 scheduled for November 8, 2021.

16 Third, for essentially the same reasons, the
17 Court finds that the balance of equities favor DGCI
18 given the injuries that may be experienced as a result
19 of the defendant's breach of that contract and the
20 forum selection clause, all of which was freely entered
21 into and through which the defendant appears to have
22 already received fully, in large part, the benefits of
23 that contract under which the plaintiff appears to have
24 substantially, if not fully, performed.

25 Fourth, the injunction. The Court finds that

1 the temporary restraining order would be in the public
2 interest by enforcing the private contract between both
3 parties, particularly in the context of this contract
4 that involves, in addition, the interest of the United
5 States government and the national defense and also the
6 need to maintain the confidence and the enforceability
7 of private contracts even within the international
8 context.

9 Finally, as to comity concerns regarding the
10 anti-suit injunction, the Court does recognize that the
11 interest of Iraq in adjudicating claims is a relevant
12 consideration. However, the Master Service Agreement
13 is a contract between private parties and does not
14 appear to implicate any Iraqi government interests or
15 governmental persons but, on the contrary, centrally
16 involves the interest of the United States.

17 So for these reasons, the motion for a
18 temporary restraining order is granted, and Defendant
19 Triple Arrow, its agents, service employees, and
20 attorneys and those other persons who are in active
21 concert or participation with those persons are
22 enjoined from proceeding with any lawsuits or other
23 legal proceedings against the plaintiff, DGCI, in Iraq
24 or any other jurisdiction other than this court.

25 The Court is also going to require, pursuant

1 to Rule 65, that the plaintiff post a \$1,000 bond by
2 cash or check.

3 The Court will also schedule a hearing on a
4 preliminary injunction for November 17 at 10:00. I
5 believe that's what we scheduled it for.

6 MR. CURRAN: I believe so, Judge.

7 THE COURT: All right, at 10:00.

8 The plaintiff shall serve a copy of this
9 order personally on a representative of the defendant.

10 All right. The Court will try to get an
11 order out here within the next hour or so.

12 MR. CURRAN: Thank you so much, Judge. I
13 appreciate it. I appreciate everyone's time.

14 THE COURT: All right. Anything else?

15 MR. CURRAN: Nothing.

16 THE COURT: All right. Very good. Thank
17 you.

18 The Court will stand in recess.

Time: 2:22 p.m.

I certify that the foregoing is a true and
accurate transcription of my stenographic notes.

/s/